

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KEITH VERNON DAVIS,)	Case No. 3:21-cv-135
)	
Plaintiff,)	JUDGE KIM R. GIBSON
)	
v.)	
)	
BARRY SMITH, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This matter is before Magistrate Judge Patricia L. Dodge for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.

Pro se plaintiff Keith Vernon Davis (“Plaintiff”) is a prisoner incarcerated at Pennsylvania’s State Correctional Institution at Houtzdale (“SCI Houtzdale”). On February 11, 2022, Plaintiff filed the operative Amended Complaint asserting numerous claims against ten SCI Houtzdale employees—defendants Smith, Ginter, Miller, Mowrey, Ivicic, Close, Barrows, Hnatkovich, Rooney, and Woomer (collectively, the “Corrections Defendants”)—as well as against another prisoner named Shawn Clancy and two “John Doe” correctional defendants. (ECF No. 41). On February 25, 2022, the Corrections Defendants filed a motion to dismiss Plaintiff’s Amended Complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. (ECF No. 37).

On July 22, 2022, Magistrate Judge Dodge filed a Report & Recommendation (“R&R”) recommending that the Court partially grant and partially deny the Correctional Defendants’ motion to dismiss. (ECF No. 63). The Magistrate Judge notified the parties that objections to the

R&R would be due by August 8, 2022. (*Id.* at 24). On September 6, 2022, Plaintiff notified the Court that he had been placed in the Restricted Housing Unit at SCI Houtzdale and had not received any documents filed in this case since April 28, 2022. (ECF No. 64). The Court received this notice on September 14, 2022, and mailed a copy of the docket and the R&R at ECF No. 63 to Plaintiff the following day. (ECF No. 65).

Neither party filed written objections, timely or otherwise. Therefore, the Court need give only “reasoned consideration” to the R&R by “afford[ing] some level of review to dispositive legal issues raised by the report[.]” *EEOC v. City of Long Branch*, 866 F.3d 93, 99–100 (3d Cir. 2017). Upon reasoned consideration of Magistrate Judge Dodge’s R&R at ECF No. 63, the following order is entered:

NOW, this 7th day of July, 2023, **IT IS HEREBY ORDERED** that Magistrate Judge Dodge’s R&R at ECF No. 63 is **ADOPTED** as the Opinion of the Court for its reasoning and conclusion.

IT IS FURTHER ORDERED that the Corrections Defendants’ motion to dismiss at ECF No. 37 is **GRANTED WITH PREJUDICE** as to the following claims and parties:

- (a) All 42 U.S.C. § 1983 claims against the Corrections Defendants in their official capacities;
- (b) All claims against Defendant Woomer;
- (c) All federal claims against Defendant Rooney;
- (d) Claim invoking the Privileges and Immunities Clause of Article IV, § 2 of the United States Constitution;
- (e) Claim invoking Oath or Affirmation Clause of Article VI of the United States Constitution;
- (f) Eighth Amendment Claim;
- (g) Fourteenth Amendment due process claim;
- (h) Claims asserted under 42 U.S.C. §§ 1981 and 2000d;
- (i) Claims asserted under the Pennsylvania Constitution;
- (j) Claims asserted under “Pennsylvania Restatement (Second) of Torts[.]” and

(k) State law claims of intentional infliction of emotional distress and willful misconduct.

IT IS FURTHER ORDERED that the Corrections Defendants' motion to dismiss at ECF No. 37 is **GRANTED WITHOUT PREJUDICE** as to the following claims:

- (a) Fourteenth Amendment equal protection claim;
- (b) Claims asserted under 42 U.S.C. §§ 1985 and 1986; and
- (c) All claims against Defendants Smith, Miller, Ginter, Hnatkovick, Ivicic, Close, and Barrows.

IT IS FURTHER ORDERED that the Corrections Defendants' motion to dismiss at ECF No. 37 is **DENIED** as to the following claims:

- (a) First Amendment retaliation claim against Defendant Mowrey;
- (b) ADA claim against Defendant Mowrey in his official capacity; and
- (c) Negligence claim against Defendant Rooney.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "Kim R. Gibson", is written over a horizontal line.

KIM R. GIBSON
UNITED STATES DISTRICT JUDGE

Notice by U.S. mail to:

Keith Vernon Davis
NF-9296
SCI Houtzdale
209 Institution Drive
Houtzdale, PA 16698